

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5065 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

VINOD DHANJI KOLI (BARIYA)

Versus

DISTRICT MAGISTRATE

Appearance:

MS DR KACHHAVAH for Petitioner

MR SAMIR DAVE AGP for Respondents.

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 27/09/1999

ORAL JUDGEMENT

Heard learned advocate Ms. D.R.Kachhuah for petitioner and learned AGP Mr. Samir Dave for respondent nos. 1, 2 and 3.

The order of detention dt. 16/11/1998 passed by respondent no.1 -District Magistrate, Jamnagar in exercise of power conferred vide Sec.3(1) of Gujarat Anti-Social Activities Act, 1985 (PASA for short) is

challenged in the present petition under Art. 226 of the Constitution.

2. The petitioner has produced grounds of detention supplied by the authority under Sec.9(1) of PAsA at Annexure:B. Perusal of grounds indicate that 12 cases are filed against petitioner at Jamnagar City 'B' Division Police Station in respect to offences made punishable under the provisions of Bombay Prohibition Act. Over & above that Criminal Case vide CR.No.158/98 was also registered at the said Police Station against the petitioner for the offences made punishable under Secs. 323-324 read with 114 of I.P.C. on the allegations that petitioner being head strong person and in the company of his accomplice had caused assault on informant Kanji Vasaram Koli suspecting that he has been supplying information to the Police as police informant. It is further indicated in the grounds of detention that four witnesses, on assurance of anonymity, have given statements against the petitioner on 8-11-1998 in respect to various antisocial activities of the petitioner including bootlegging activity.

That in consideration of said material, the detaining authority has concluded that the petitioner is a bootlegger within the meaning of Sec.2(b) of PAsA. That resort to general provisions of law are insufficient to prevent the petitioner from continuing his antisocial activity which prejudicially affect the maintenance of public order and as such impugned order is passed.

3. The petitioner has challenged the impugned order on numerous ground. It has been contended on behalf of the petitioner that representation made by the advocate of the petitioner dt. 30-6-1999 to Chief Minister as well as detaining authority have been received by the said authorities. Further no reply has been sent to said representation. It is also contended that vide said representation, documents like report of Chemical Analyser, panchnama and statements of witnesses pertaining to Crime Register Nos. 789/98, 797/98, 894/98 and 794/98 were claimed. The petitioner also claimed Medical Certificate and statements of witnesses in respect to Crime Register Nos. 158/98 and 160/98. Learned advocate appearing for the petitioner has stated that as per instructions, no such documents have been supplied to the petitioner despite receipt of said representation and as such petitioner is prevented from making an effective representation which has violated fundamental right of the petitioner and as such continued detention of the petitioner is illegal.

4. The learned AGP Mr. Samir Dave, on instruction, has stated from file that representation dt. 30-6-1999 made on behalf of the petitioner to Chief Minister was considered and rejected on 3-7-1999. While representation sent to detaining authority was received and was forwarded to Home Department and subsequently was rejected on 24-7-1999. The information regarding rejection of said representation were sent to Jail Superintendent. However the learned AGP Mr. Dave could not dispute the proposition that documents claimed by the petitioner vide representation dt. 30-6-1999 have not been supplied to the petitioner or no reference has been made in respect to why such documents have not been supplied in any reply served to the detenu by the authority. It may be noted that documents claimed on behalf of the petitioner are in respect to offences registered and were pending investigation on the date of passing of impugned order and as such no documents pertaining to said crime registers were supplied to the petitioner. Under the circumstances, it is undisputed that documents claimed by the representation made on behalf of the petitioner have not been supplied by the authority to the detenu.

5. Right to represent against the preventive detention envisages under Art.22(5) of the Constitution and non-compliance thereto pursuant to said representation amount to violation of fundamental right guaranteed under the Constitution which renders the detention order illegal.

In the instant case, on the basis of above stated discussion, I am constrained to hold that as the authority has failed to respond to representation dt. 30-6-1999 made on behalf of the petitioner, the continued detention of the petitioner has become illegal and deserves to be set aside.

Since the petition succeeds on the above stated ground, it is not necessary to consider other grounds raised by the petitioner.

6. On the basis of foregoing discussion, petition is allowed. Impugned order dt. 16-11-1998 passed by the respondent no.1 -District Magistrate, Jamnagar against the petitioner -Vinod Dhanji Koli (Bariyo) is hereby quashed and set aside. The petitioner is ordered to be set at liberty forth with, if not required in any other case. Rule to that extent made absolute.

Date:27/9/1999. (A.K.TRIVEDI,J.)
(ccshah)